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February 4, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW -- Room TW-A325
Washington, D.C. 20554

Re: ***Ex Parte***
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from U S WEST, Inc., Transferor, to Qwest Communications International Inc., Transferee, CC Docket No. 99-272

Dear Ms. Salas:

On February 3, 2000, Robert A. McCausland of Allegiance Telecom, Inc. (Allegiance); Stacey Stewart of McLeodUSA Telecommunications Services, Inc. (McLeodUSA); A. Richard Metzger, Jr. and Michael B. Hazzard of Lawler Metzger & Milkman, LLC, counsel to Allegiance Telecom; and Philip L. Verveer and Thomas Jones of Willkie Farr & Gallagher, counsel to McLeodUSA, met with Robert C. Atkinson and Donald K. Stockdale of the Common Carrier Bureau to discuss the views of Allegiance and McLeodUSA regarding issues pending before the Commission in the above-referenced proceeding. On that same day, Messrs. McCausland, Stewart, Metzger, Hazzard, Verveer and Jones also met with Dorothy Attwood, Legal Advisor to Chairman Kennard to discuss the same issues.

During each meeting, representatives of McLeodUSA and Allegiance explained why it is necessary for the Commission to impose conditions on any approval of the transaction. In particular, McLeodUSA and Allegiance emphasized the need for conditions designed to ensure the merged company's compliance with key market-opening requirements of the Communications Act of 1934, as amended:

- U S WEST has routinely failed to comply with the requirements of Section 251. For example, U S WEST has repeatedly placed unreasonable and discriminatory conditions

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on the resale of its local services in violation of Section 251(c)(4).[1] U S WEST has refused to provide McLeodUSA with nondiscriminatory access to its operations support systems in violation of Sections 251(c)(3) and 251(c)(4).[2] U S WEST has refused to provide McLeodUSA with collocation on just and reasonable terms and conditions in violation of Section 251(c)(6).[3] U S WEST is also in violation of the more general requirement to maintain adequate service quality as evidenced by the authority in Section 214(d) and its state law counterparts.

- The proposed transaction will make this already unacceptable situation worse because it will increase the incentives of the U S WEST incumbent local exchange carriers ("ILECs") to discriminate against competitors.[4] The U S WEST ILECs currently do not have a strong incentive to degrade unaffiliated carriers' terminating access service because the ILECs do not terminate interLATA traffic carried by an affiliated carrier. With the addition of Qwest, the U S WEST ILECs will suddenly be able to capture the benefits of providing terminating service to their affiliated long distance carrier on preferential terms. Furthermore, the merger will increase U S WEST's incentive to preserve its control over bottleneck termination facilities. This is because retaining those bottleneck facilities will allow U S WEST to discriminate in favor of the Qwest long distance business. The cheapest way for U S WEST to preserve its control over bottleneck terminating facilities is to degrade the wholesale inputs it provides to CLECs such as Allegiance and McLeodUSA.
- In addition, the proposed transaction will give U S WEST new opportunities to divert resources away from its wholesale ILEC operations.[5] As a result of their affiliation with Qwest, the U S WEST ILECs will suddenly have the opportunity to invest money in Qwest's networks in Europe, Mexico, and in the U.S. outside of the U S WEST region as well as in undersea cables. Starving the ILEC wholesale operations and funding the new Qwest businesses is a win-win for the combined firm. First, competitive entry will be largely prevented, thus preserving margins in the ILEC business. Second, inexpensive capital will be freed up for investment in the Qwest global networks. The Commission cannot allow this result. Investment in non-jurisdictional assets cannot be tolerated where the ILEC in question has failed first to allocate the resources necessary to comply with the requirements of Sections 251-252.

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1 See Letter from Philip L. Verveer to Ms. Magalie Roman Salas, CC Docket No. 99-272 at 2-3 (Jan. 13, 2000) ("McLeodUSA Jan. 13, 2000 Ex Parte").

2 See id. at 3-6.

3 See id. at 6-8.

4 See Bridger M. Mitchell, "Report On Some Anticompetitive Aspects Of The Proposed Merger Of Qwest And U S WEST" at 9-11 (Dec. 20, 1999) ("Mitchell Report"), attached to the McLeodUSA Jan. 13, 2000 Ex Parte.

5 See id. at 8-9.

- Furthermore, the proposed transaction will likely reduce the ability of regulators to detect the diversion of resources away from the U S WEST ILECs.[6] The addition of Qwest to U S WEST will quickly and dramatically increase the complexity and scope of the businesses with which the U S WEST ILECs are affiliated. As a result, it will be much more difficult for regulators to determine whether money has been misallocated away from the regulated ILEC businesses and toward unregulated businesses.
- Finally, it is simply untrue that these harmful effects will be offset by the combined firm's increased incentive to comply with Sections 251-252 in order to receive Section 271 approval.[7] U S WEST and Qwest have claimed that the merged firm would have a strong incentive to enter the in-region interLATA market because the in-region Qwest assets are "sunk." That is, U S WEST and Qwest have essentially claimed that those assets can only be used to provide interLATA service by the merged firm.[8] But U S WEST and Qwest have not and cannot point to any factor that would preclude a different carrier from using the assets in question to provide service.[9] The merged firm would therefore consider the sale price of the Qwest in-region assets as an opportunity cost in its assessment of whether Section 271 approval should be pursued. This cost, when added to the otherwise high cost (both in terms of investment and loss of market share) associated with Section 271 compliance, will almost certainly cause the merged firm to continue to forego any effort to comply with Section 271 that is sufficiently serious to overbalance the harms caused by the merger.

During the meeting with Ms. Attwood, Allegiance and McLeodUSA provided to her: (a) a February 2, 2000 complaint filed against U S WEST by New Edge Networks before the Washington Utilities and Transportation Commission ("WUTC"); (b) a New Edge Networks press release describing the complaint; (c) February 1, 2000 WUTC Staff testimony recommending stringent conditions on the approval of the pending Qwest/U S WEST merger; and (d) a WUTC press release describing the Staff testimony. A copy of each of these documents is appended hereto.

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6 See id. at 6-8.

7 See id. at 11-13.

8 See Declaration of Bruce Owen at 9, Attachment B to Qwest and U S WEST's "Response to Comments on Applications for Transfer of Control," CC Docket No. 99-272 (Oct. 18, 1999).

9 See Mitchell Report at 12.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and one copy of this letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Philip L. Verveer

Attachments

cc: Dorothy Attwood, Legal Advisor to Chairman Kennard
Robert C. Atkinson, Deputy Bureau Chief
Donald K. Stockdale, Associate Bureau Chief
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NEW EDGE NETWORK, INC., Complainant, v. U S WEST COMMUNICATIONS, INC., Respondent.	DOCKET NO. ____________ COMPLAINT (Violations of State and Federal Law and Federal Regulations; Breach of Contract)

Pursuant to RCW 80.04.110 and WAC 480-09-420, Complainant, New Edge Network, Inc. ("New Edge") states and alleges as follows:

INTRODUCTION

1. This is a Complaint action that arises out a pattern of misconduct and the many discriminatory practices of U S WEST Communications, Inc. ("U S WEST").

2. U S WEST discriminates against New Edge: (1) by refusing to provide New Edge with vital and required loop pre-qualification information while at the same time providing that exact information to itself and to its xDSL retail arm; (2) by locating or providing second copper pairs (i.e., second lines) to its retail end users after it has informed New Edge that facilities are not available for New Edge to offer to that same customer; and (3) by refusing to dispatch a technician to locate those second copper pairs, although U S WEST dispatches technicians to do such work for itself. U S WEST engages in further anti-competitive conduct by failing to provision properly unbundled transport to New Edge.

3. As shown in the information that follows, these actions constitute:

A. Violations of Washington State law, the Telecommunications Act of 1996 (the "Act"), corresponding federal regulations, and decisions and orders of the Federal Communications Commission ("FCC");

B. Unreasonable and unfair practices in which U S WEST discriminates against New Edge in favor of itself and its affiliates, thereby securing for itself and its affiliates an unfair and unlawful competitive advantage; and

C. A breach of contract with respect to the obligations of U S WEST under the Interconnection Agreement between New Edge and U S WEST.

I. THE PARTIES

4. New Edge is a Delaware corporation, with its principal place of business at 3000 Columbia House Boulevard, Vancouver, WA 98661. On July 28, 1999, the Washington Utilities and Transportation Commission (the "Commission") granted New Edge authority to provide local exchange and intrastate interexchange telecommunications services throughout the State of Washington as a competitive provider in Docket No. UT-990945.

5. U S WEST is a Colorado corporation authorized to do business in the State of Washington as a telecommunications utility. U S WEST's main corporate office in Washington is at 1600 Seventh Avenue, Seattle, WA 98191. Any references to U S WEST include any predecessors, successors, subsidiaries, affiliates, and divisions of U S WEST as the context requires.

II. JURISDICTION

6. The Commission has jurisdiction over this Complaint pursuant to RCW 80.01.040 (general powers of the Commission) and RCW 80.04.110. The Commission also has jurisdiction pursuant to RCW 80.36.186, .170, .300, and 47 U.S.C. § 252(e).

III. BACKGROUND

7. New Edge is a competitive local exchange carrier ("CLEC") that competes with incumbent local exchange carriers ("ILECs") such as U S WEST.

8. New Edge, founded in 1999, is a rapidly growing, start-up telecommunications company that provides high-speed telecommunications service, using Digital Subscriber Line ("DSL" or "xDSL") technology for connections to the Internet and other computer networks. xDSL technology uses the existing copper wires that provide telephone service to homes and businesses, with additional digital technology added. New Edge focuses on providing xDSL service to under-served small, medium and rural markets

9. High-speed connections have become vital to individuals and businesses as they increase their usage of the Internet and local area networks. New Edge's wholesale xDSL service is available in a variety of speeds ranging from 144 kilobits per second on up to 1.5 megabits per second. In addition to speed, other principal benefits of xDSL technology are continuous "on demand" connectivity, eliminating dial up or waiting, and secure access using dedicated facilities.

10. U S WEST is one of the Regional Bell Operating Companies ("RBOCs") divested from AT&T as part of the Modified Final Judgment and permitted to provide local exchange service throughout a fourteen (14) state region, including Washington.

11. Each of the U S WEST affiliates operating in the fourteen states is an ILEC and, as such, has enjoyed the benefits of having long-term monopoly power throughout its region.

12. U S WEST's long-standing monopoly power persists due to its continuing control of the ubiquitous physical facilities that underlie the local telecommunications network throughout the U S WEST region. The network consists of, among other things, (1) millions of

lines – also referred to as "loops" – to residential and business consumers, (2) hundreds of central offices – i.e., buildings where the residential and business lines meet and connect to the rest of the local telephone network, (3) transmission facilities between those central offices, and (4) operations support systems ("OSS") – i.e., the computerized pre-ordering, ordering, provisioning, maintenance and repair, and billing systems used by U S WEST, including the information contained in such systems.

13. As a result of being protected from competition for nearly a century, U S WEST maintains and controls monopoly power over the network and all of its components – including central offices, loops, transmission facilities and OSS – required to make local telephone connections.

14. U S WEST's monopoly power applies to both traditional voice calls and data transmissions. For example, when New Edge provides its end user with a connection to the end user's selected Internet Service Provider ("ISP"), the high-speed data transmission traverses a U S WEST-owned loop that is leased by New Edge pursuant to the Act from the end-user's home or business location to a U S WEST-owned central office, where New Edge has collocated some of its equipment. Then, the high-speed signal travels from the New Edge collocated equipment along another U S WEST wire (also leased by New Edge) to a New Edge "hub." From that hub, the signal then runs along another U S WEST wire (again, leased by New Edge) to the end user's ISP.

15. Because the transmissions rely on the U S WEST-owned network and its many components and because there are no alternative facilities available, federal and state law provide that New Edge must receive nondiscriminatory access to the U S WEST facilities in order to transmit its signals. It would be prohibitively costly, time-consuming and redundant for any

competing carrier, including New Edge, to attempt to duplicate U S WEST's ubiquitous facilities. Accordingly, New Edge's high-speed data service must rely on U S WEST's ubiquitous local telephone network.

IV. FACTUAL ALLEGATIONS

A. The Interconnection Agreement Between the Parties

16. On April 22, 1998, in Docket No. UT-980312, the Commission approved the interconnection agreement negotiated between Covad Communications Co. ("Covad") and U S WEST.

17. On or about August 10, 1999, New Edge and U S WEST executed an agreement ("Adoption Agreement") in which New Edge and U S WEST agreed to adopt the rates, terms and conditions of the interconnection agreement between U S WEST and Covad.

18. On August 27, 1999, New Edge and U S WEST filed an Interconnection and Service Resale Agreement ("Interconnection Agreement"), which included First and Second Amendments to the Agreement with the Commission, seeking the Commission's approval pursuant to Section 252(e)(2) of the Act. A copy of the Agreement, including First and Second Amendments, is attached hereto as Exhibit A.

19. On September 22, 1999, in Docket No. UT-990386, the Commission approved the filed Agreement, including the First and Second Amendments to the Agreement.

20. On November 17, 1999, New Edge and U S WEST filed with the Commission a Third Amendment to the Agreement and a joint request for approval. A copy of the Third Amendment to the Agreement is attached hereto as Exhibit B.

21. The Commission approved the Third Amendment to the Agreement in Docket No. UT-990386 on December 22, 1999.

B. **The Loop Pre-Qualification Dispute**

22. In order to provide its xDSL service to end users, New Edge depends on U S WEST to provision "local loops" – i.e., the copper wires that connect New Edge end users to U S WEST's central offices or, in some instances, remote terminals.

23. Under Section 251(c)(3) of the Act, U S WEST must provide, on demand by New Edge, nondiscriminatory access to "unbundled network elements," meaning the separate parts of its large local telephone network, including local loops. 47 U.S.C. § 251(c)(3).

24. Similarly, the Interconnection Agreement between New Edge and U S WEST provides that U S WEST "will provide New Edge with the same features, functions and capabilities of a particular element that [U S WEST] provides to itself." Agreement § 8.1.3

25. Further, Section 10 of the Interconnection Agreement states that "[f]or all Local Services, Network Elements ordered under this Agreement, USWC will provide New Edge pre-ordering, ordering and provisioning, maintenance and repair, and billing services within the same level of quality of service available to USWC."

26. Under Section 10.3.1 of the Interconnection Agreement, U S WEST is required to provide a pre-ordering function and process that verifies addresses, checks service availability, and returns end user service information.

27. The Interconnection Agreements provides further that "[a]t such time as pre-ordering and DLR interface is available through EDI, USWC will make shall [sic] such capability available to New Edge." See Interconnection Agreement at § 10.3.1.

28. Pursuant to Section 10.3.1.2 of the Interconnection Agreement, the Operational Support Systems ("OSS") pre-ordering function should return to New Edge a list of products and services available in the central office serving a particular customer.

29. Section 51.319(g) of the FCC's rules and regulations provides that an ILEC "shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service." Rule 51.319(g) requires further that "[o]perations support systems functions consist or pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information," and "an incumbent LEC, as part of its duty to provide access to the pre-ordering function, must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC." 47 C.F.R. § 51.319(g).

30. In its recent *UNE Remand Order*, the FCC clarified that "the pre-ordering function includes access to loop qualification information," which "identifies the physical attributes of the loop plant (such as loop length, the presence of analog load coils and bridge taps, and the presence and type of Digital Loop Carrier) that enables carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies."[1]

31. Further, the FCC's *UNE Remand Order* reiterates the fact that "an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent," and "[c]onsistent with [the FCC's] nondiscriminatory access obligations, the incumbent LEC must provide loop qualification information . . . on any [] basis that the incumbent provides such information to itself." ¶ 427.

32. Moreover, the incumbent is required to provide such loop qualification information "to competitors within the same intervals it is provided to the incumbent LEC's

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, ¶ 426, ("*UNE Remand Order*") (issued November 5, 1999).

retail operation." *Id.* ¶ 431.

33. In order to provide xDSL service over the loops, U S WEST must pre-qualify loops for digital capabilities. Loop pre-qualification includes testing of the loops to determine whether the loop in question is capable of supporting DSL services.

34. As an ILEC with complete ownership and control over its loops, U S WEST has available for its own use the above-described pre-qualification information.

35. New Edge needs access to the loop information in order to determine what services, if any, it can or will offer to its customers. However, New Edge is able to receive neither adequate pre-qualification information from U S WEST nor information equal to that which is available to U S WEST.

36. U S WEST requires New Edge to obtain loop qualification information on a line-by-line basis. The line-by-line qualification process is performed through the system known as Interconnect Mediated Access ("IMA"). On average, each pre-qualification check for each line takes New Edge eight (8) minutes to perform.

37. The information obtained through IMA relies on information contained in a system called Loop Facilities Assignment Control System ("LFACS"), a database for assigning and controlling cable pairs. The LFACS system contains vast amounts of misinformation and cannot compare to the accuracy provided by performing the line qualification test directly at the central office. Furthermore, through IMA, New Edge has access to only a portion of the information in the LFACs system.

38. New Edge's access to IMA is prohibited by U S WEST between the hours of 8:00 PM and 5:00 AM, Monday through Friday, and all weekend.

39. On information and belief, U S WEST performs its line qualification tests directly

at the central office.

40. U S WEST conducts pre-qualification checks for itself and its retail arm, which sells the U S WEST xDSL service known as "MegaBit," in large batches, pre-qualifying all of the lines in an entire central office at one time. U S WEST provides a full report of the test results for an entire central office to its xDSL retail arm overnight.

41. Because U S WEST does not have to pre-qualify its lines through IMA, U S WEST is free to test lines and obtain loop information reports at any time, twenty four (24) hours a day, seven (7) days a week.

42. New Edge has requested U S WEST to provide it with a loop qualification information report, which is due to New Edge under both the Act and the Interconnection Agreement and pursuant to the FCC's *UNE Remand Order*.

43. The loop qualification information report, which U S WEST generates for itself and its xDSL retail arm, contains the following information for each line in the tested central office: telephone number, dB capability, CS, USOC, address and qualification levels.

44. U S WEST has not denied that it generates a loop qualification information report, nor has U S WEST has not denied that it provides the report information to itself and its xDSL retail arm.

45. U S WEST has refused to provide the requested loop pre-qualification information to New Edge.

C. U S WEST's "No Facilities" Claims

46. In many situations where U S WEST provides loop pre-qualification information to New Edge, the information provided is incorrect. U S WEST's subsequent responses, actions and practices – as described below – clearly demonstrate that U S WEST's actions are intended

to ensure that its own xDSL retail service maintains an unfair competitive advantage over the xDSL service offered by New Edge.

47. After New Edge requests pre-qualification information regarding potential customers' lines, U S WEST incorrectly informs New Edge that the necessary facilities to provide xDSL service – i.e., a second copper pair or second line – are not available at some of those consumers' locations. In other words, U S WEST claims that there are "no facilities" at some of the locations.

48. When those consumers, for whom U S WEST has claimed no facilities exist, contact U S WEST directly to order a second line, U S WEST markets its xDSL "MegaBit" service and, if the consumers do not want xDSL service, second lines.

49. Further, U S WEST, in marketing directly to New Edge's potential customers in cases where U S WEST has previously claimed a lack of facilities, offers to dispatch a technician to the customers' locations in order to search for a second copper pair.

50. U S WEST has stated to potential New Edge customers that information in the initial database report is often inaccurate, and despite the appearance of no facilities in the LFACS records database, technicians are able to locate a second copper pair "almost every time" at the customer location.

51. U S WEST refuses to dispatch technicians to locate second copper pairs at New Edge's request.

52. After it informs New Edge that no second line exists for consumers, and after it dispatches technicians to find a second copper pair at the consumers' locations on behalf of U S WEST's retail operations, U S WEST is able to locate existing second copper pairs and installs second lines for the consumers, who then become U S WEST customers.

D. Unbundled Transport Provisioning Issues

53. New Edge provisions its xDSL service through the use of digital subscriber line access multiplexers ("DSLAMs"), which it collocates, in most cases, in U S WEST's central offices.

54. In order to provide xDSL service and utilize its DSLAMs, New Edge must order from U S WEST unbundled dedicated interoffice transport ("UDIT") from DSLAM to DSLAM. Although alternative facilities between U S WEST central offices are available in some cases, New Edge's focus on rural markets typically requires New Edge to order the necessary transport from U S WEST.

55. Although the ordering of DSLAM collocation and UDIT are uniquely intertwined, U S WEST's procedures for processing DSLAM and UDIT orders cause significant and harmful delays to New Edge.

56. U S WEST does not provide pre-ordering capabilities that disclose the availability of UDIT facilities. Accordingly, New Edge does not know if UDIT facilities are available until after it places an order for UDIT.

57. The lack of access to pre-ordering information that discloses available UDIT facilities hampers New Edge's ability to plan its DSLAM installation orders.

58. Further, U S WEST does not allow New Edge to order UDIT until U S WEST has delivered operational collocation space.

59. New Edge's attempts to order UDIT and collocation of DSLAMs are consistently stymied by U S WEST's failure to update facilities records in a timely and reasonable manner.

60. U S WEST inputs into the Trunk Inventory Record Keeping System ("TIRKS") all of the DSLAMs New Edge collocates in U S WEST offices. U S WEST will accept a request

for UDIT only after this information has been input properly into TIRKS.

61. In many instances U S WEST has not input the DSLAM information in a timely manner, and the UDIT order is rejected as a request that cannot be fulfilled because no DSLAM appears as a termination point in the requested location.

62. These actions by U S WEST strand New Edge's DSLAM equipment in U S WEST's central offices.

63. The rejection of UDIT orders results in delays which, in turn, result in U S WEST's retail xDSL service obtaining an unfair competitive advantage over the xDSL service offered by New Edge.

V. FIRST CLAIM FOR RELIEF (RCW 80.36.170)

64. New Edge realleges and incorporates herein paragraphs 1 through 63.

65. RCW 80.36.170 provides that "[n]o telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

66. By providing itself and its retail arm with the loop pre-qualification information reports, which it refuses to New Edge, and by locating or providing second copper pairs or second lines to consumers after it has informed New Edge that facilities are not available for that same customer's location, U S WEST discriminates against New Edge in violation of RCW 80.36.170.

67. By refusing to dispatch a technician to locate a second copper pair, when it does so for itself and its xDSL retail arm, U S WEST violates RCW 80.36.170.

68. Additionally, U S WEST's failures with respect to provisioning facilities and unbundled transport disadvantage New Edge, in violation of RCW 80.36.170.

VI. SECOND CLAIM FOR RELIEF (RCW 80.36.186)

69. New Edge realleges and incorporates herein paragraphs 1 through 68.

70. RCW 80.36.186 provides that "no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage."

71. U S WEST subjects New Edge to undue and unreasonable prejudice and competitive disadvantage, in violation of RCW 80.36.186, by refusing to provide New Edge with the loop pre-qualification information contained in loop qualification information reports.

72. U S WEST provides itself and its xDSL retail arm with an undue and unreasonable preference and advantage, in violation of RCW 80.36.186, by providing itself and its retail arm with the loop pre-qualification information contained in the loop pre-qualification information reports, which it refuses to New Edge.

73. U S WEST subjects New Edge to undue and unreasonable prejudice and disadvantage and provides itself and its xDSL retail arm with an undue and unreasonable preference and advantage, in violation of RCW 80.36.186, by locating or providing second copper pairs or second lines to consumers after it has informed New Edge that facilities are not available for that same customer's location.

74. By refusing to dispatch a technician to locate a second copper pair, when it does

so for itself and its xDSL retail arm, U S WEST violates RCW 80.36.186.

75. Additionally, U S WEST's failures with respect to provisioning facilities and unbundled transport disadvantage New Edge, in violation of RCW 80.36.186.

VII. THIRD CLAIM FOR RELIEF (47 U.S.C. 251(c)(3))

76. New Edge realleges and incorporates herein paragraphs 1 through 75.

77. Section 251(c)(3) of the Act provides that ILECs must provide, on demand by CLECs, nondiscriminatory access to "unbundled network elements," meaning the separate parts of its large local telephone network, including local loops. 47 U.S.C. § 251(c)(3).

78. U S WEST discriminates against New Edge in providing access to unbundled network elements, in violation of Section 251(c)(3) of the Act, by refusing to provide New Edge with the loop pre-qualification information reports.

79. U S WEST discriminates against New Edge in providing access to unbundled network elements, in violation of Section 251(c)(3) of the Act, by locating or providing second copper pairs or second lines to consumers after it has informed New Edge that facilities are not available for that same customer's location.

80. By refusing to dispatch a technician to locate a second copper pair, when it does so for itself and its xDSL retail arm, U S WEST violates Section 251(c)(3) of the Act.

VIII. FOURTH CLAIM FOR RELIEF (BREACH OF CONTRACT; INTERCONNECTION AGREEMENT § 8.1.3)

81. New Edge realleges and incorporates herein paragraphs 1 through 80.

82. Section 8.1.3 of the Interconnection Agreement between New Edge and U S WEST provides that U S WEST "will provide New Edge with the same features, functions and

capabilities of a particular element that [U S WEST] provides to itself."

83. By refusing to provide New Edge with the loop pre-qualification information reports, U S WEST has breached Section 8.1.3 of the Interconnection Agreement.

84. By locating or providing second copper pairs or second lines to consumers after it has informed New Edge that facilities are not available for that same customer's location, U S WEST has breached Section 8.1.3 of the Interconnection Agreement.

IX. FIFTH CLAIM FOR RELIEF (BREACH OF CONTRACT; INTERCONNECTION AGREEMENT § 10)

85. New Edge realleges and incorporates herein paragraphs 1 through 84.

86. Section 10 of the Interconnection Agreement provides that "[f]or all Local Services, Network Elements ordered under this Agreement, USWC will provide New Edge pre-ordering, ordering and provisioning, maintenance and repair, and billing services within the same level of quality of service available to USWC."

87. By refusing to provide New Edge with the loop pre-qualification information reports, U S WEST has breached Section 10 of the Interconnection Agreement.

88. By locating or providing second copper pairs or second lines to consumers after it has informed New Edge that facilities are not available for that same customer's location, U S WEST has breached Section 10 of the Interconnection Agreement.

89. By refusing to dispatch a technician to locate a second copper pair, when it does so for itself and its xDSL retail arm, U S WEST has breached Section 10 of the Interconnection Agreement.

90. Additionally, U S WEST's failures with respect to provisioning facilities and unbundled transport disadvantage New Edge, in violation of Section 10 of the Interconnection

Agreement.

X. SIXTH CLAIM FOR RELIEF (BREACH OF CONTRACT; INTERCONNECTION AGREEMENT § 10.3.1.2)

91. New Edge realleges and incorporates herein paragraphs 1 through 90.

92. Section 10.3.1.2 of the Interconnection Agreement provides that the OSS pre-ordering function should return to New Edge a list of products and services available in the central office serving a particular customer.

93. By locating or providing second copper pairs or second lines to consumers after it has informed New Edge that facilities are not available for that same customer's location, U S WEST has breached Section 10.3.1.2 of the Interconnection Agreement.

94. Additionally, U S WEST's failures with respect to provisioning facilities and unbundled transport disadvantage New Edge, in violation of Section 10.3.1.2 of the Interconnection Agreement.

XI. SEVENTH CLAIM FOR RELIEF (47 C.F.R. § 51.319(g))

95. New Edge realleges and incorporates herein paragraphs 1 through 94.

96. Section 51.319(g) of the FCC's rules and regulations implementing Section 251(c)(3) of the Act provides that an ILEC "shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service." 47 C.F.R. § 51.319(g).

97. Further, Rule 51.319(g) requires that "an incumbent LEC, as part of its duty to provide access to the pre-ordering function [of OSS], must provide the requesting carrier with

nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC." 47 C.F.R. § 51.319(g).

98. By refusing to provide New Edge with the loop pre-qualification information reports, U S WEST violates has breached Rule 51.319(g) of the FCC's rules and regulations.

99. By locating or providing second copper pairs to consumers after it has informed New Edge that facilities are not available for that same customer's location, U S WEST violates Rule 51.319(g) of the FCC's regulations.

XII. REQUEST FOR RELIEF

100. New Edge requests that the Commission:

a. issue preliminary and permanent injunctive relief ordering U S WEST to provide New Edge with the above-described loop pre-qualification information;

b. issue preliminary and permanent injunctive relief ordering U S WEST, at New Edge's request, to dispatch a technician to a consumer's location to search for a second copper pair or second line in circumstances where U S WEST's records indicate that no facilities are available at that consumer's location;

c. enter an order finding that U S WEST has violated Washington State and federal statutes and federal rules and regulations;

d. enter an order finding that U S WEST has subjected New Edge to undue or unreasonable prejudice or disadvantage;

e. enter an order finding that U S WEST has granted to itself and its affiliates an undue and unreasonable advantage;

f. enter an order finding that U S WEST has failed to provide New Edge with nondiscriminatory access to the U S WEST network;

g. issue preliminary and permanent injunctive relief enjoining U S WEST in the future from violating Washington State and federal statutes and federal rules and regulations;

h. enter an order finding that U S WEST has violated the terms and conditions of its interconnection agreement;

i. issue preliminary and permanent injunctive relief enjoining U S WEST in the future from violating the terms and conditions of its interconnection agreement;

j. issue an order requiring U S WEST to immediately devote the resources and personnel necessary to insure that it meets its obligations under the Act and the interconnection agreement;

k. issue an order requiring U S WEST to improve access to its OSS and network information to provide adequate and necessary information and data needed by New Edge in the planning and provisioning of local exchange and advanced services, including, but not limited to, availability of interoffice facilities;

l. issue an order requiring U S WEST to permit New Edge to order UDIT no less than fifteen (15) days before the date the corresponding New Edge collocated DSLAM is to be ready for service;

m. issue an order –with appropriate penalties for failure to comply – requiring U S WEST to submit monthly reports to ensure that U S WEST meets its obligations under the interconnection agreement and to ensure compliance and prevent backsliding with respect to the injunctive relief granted by the Commission in this proceeding;

n. impose penalties against U S WEST under RCW 80.04.380 for its violations of the public service laws;

o. issue an order requiring the divestiture of U S WEST into structurally separate wholesale ("LoopCo") and retail ("RetailCo") companies with entirely separate officers, employees and physical presence, ensuring that the retail arm must work through U S WEST's wholesale division to obtain services and elements at the same rates, terms and conditions as any other CLEC; and

p. provide such other legal and equitable relief as is just and proper.

DATED this ____ day of February 2000.

Respectfully submitted
on behalf of New Edge Network, Inc.,

DAVIS WRIGHT TREMAINE LLP

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News Release

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NEW EDGE NETWORKS ACCUSES USWEST OF ANTI-COMPETITIVE PRACTICES; URGES BREAKUP

VANCOUVER, Wash. — (Feb. 2, 2000) — New Edge Networks, the leading national DSL provider in small, midsize and semirural areas, today accused USWEST Communications of anti-competitive practices and urged Washington state regulators to split up the company in order to reduce the monopoly stronghold in its 14-state region.

New Edge Networks is charging USWEST with a pattern of unfair and discriminatory practices in providing information and access to network facilities necessary for New Edge Networks to provide high-speed Internet access using DSL technology. The charges are included in a formal complaint filed Wednesday with the Washington Utilities and Transportation Commission.

According to the complaint, USWEST discriminates against New Edge Networks by refusing to provide vital and required telephone line pre-qualification information while at the same time providing that exact information to itself and to its DSL retail arm; by locating or providing second copper pairs (i.e., second telephone lines) to its retail end users after it has informed New Edge that facilities are not available for New Edge to offer service to that same customer; and by refusing to dispatch technicians to locate those second copper pairs, although USWEST dispatches technicians to do such work for itself.

"These are blatant, unreasonable and unlawful competitive practices that fly in the face of state and federal laws and regulations," said Susan McAdams, vice president of external affairs for New Edge Networks. "These tactics deter competition and the introduction of competitive local communications services. Consumers pay the ultimate price by not having the benefit of choice for new service offerings, especially in small, midsize and semirural areas."

New Edge Networks is asking the Commission to issue an order requiring the divestiture of USWEST into structurally separate companies: a wholesale company that owns the lines and facilities and sells access to all communications providers on equal terms and conditions and a retail company that sells services to end user customers.

New Edge Networks also is asking the Commission to issue preliminary and permanent injunctions barring USWEST from continuing its anti-competitive practices, order the company to dispatch technicians to search for unused lines, and to devote adequate resources to meet its requirements under telecommunications laws and regulations. New Edge Networks also urges the Commission to exercise its authority to impose fines and penalties.

Based in Vancouver, Wash., New Edge Networks is the leading national wholesale DSL provider in small, midsize and semi-rural markets. Since its founding last June, New Edge Networks has raised more than $300 million from top tier private venture firms, global financial institutions and worldwide technology firms that include: Accel Partners, Palo Alto, Calif.; Crosspoint Venture Partners, Woodside, Calif.; Greylock, Boston, Mass.; Meritech Capital Partners, Menlo Park, Calif.; Comdisco Ventures; Intel Corporation; Newbridge Networks; Goldman, Sachs & Co.; and, Morgan Stanley Dean Witter. The company's Web site address is www.newedgenetworks.com

(END)